

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)				
)				
Numbering Resource Optimization)	CC	Docket		
No. 99-200)				
Implementation of the Local Competition)				
Provisions of the Telecommunications Act)	CC	Docket		
No. 96-98)				
Of 1996)				

COMMENTS OF NEXTEL COMMUNICATIONS, INC.

Pursuant to the October 16, 2003 Public Notice of the Federal Communications Commission ("FCC" or "Commission"),¹ Nextel Communications, Inc. ("Nextel") respectfully submits these Comments in opposition to the California Public Utilities Commission ("CPUC") Petition seeking to implement two permanent specialized overlays ("SOs") that, together, would cover the entire state of California, and would include all "transparent" or "non-geographic-based" services.² While Nextel is pleased that the CPUC appears to have recognized that certain California area codes are in serious jeopardy, the SO proposal falls far short of resolving the number shortage and, as the CPUC's own staff has recognized, is burdened with numerous unresolved problems.³ Before the Commission can even consider this proposal, it should require the CPUC to investigate these problems fully and, based upon input from all affected parties,

¹ *Wireline Competition Bureau Seeks Comment on the Petition of the California Public Utilities Commission And Of The People Of The State Of California For Authority To Implement Specialized Overlay Area Codes, Public Notice*, CC Docket No. 99-200 (rel. October 16, 2003) ("Public Notice").

² *Petition of the California Public Utilities Commission and of the People of the State of California For Authority to Implement Specialized Overlay Area Code*, CC Docket No. 99-200, CC Docket No. 96-98 (filed October 6, 2003) ("the CPUC Petition"). The CPUC Petition would not include wireless services in the specialized overlay area codes.

³ CPUC Staff Memorandum on the Specialized Overlay Proposal Prepared by the Telecommunications Division and the Legal Division ("Memorandum") (dated September 30, 2003). A copy of the Memorandum is attached as Attachment A. The Memorandum admirably details the flaws of the proposed SOs and, by itself, should convince the Commission not to give the CPUC Petition any serious attention.

demonstrate precisely how, if at all, each problem can be addressed and successfully overcome in a manner that furthers the public interest.

I. BACKGROUND

In late September 2003, CPUC staff organized two conference calls with a wide range of telecommunications carriers, each lasting approximately two hours, to discuss the CPUC's SO proposal. During these calls, various carriers raised numerous questions and concerns about the proposal.⁴ Among the many technical, operational and economic problems created by the "super-sized" double-SO concept, the carriers also highlighted for staff that the proposal simply does not accomplish the CPUC's goals -- on the contrary, it would result in less efficient number allocation. The CPUC staff acknowledged the carriers' concerns and gave the impression that it would investigate them further. Four days after these calls, the CPUC staff provided the CPUC Commissioners with the Memorandum, which summarized, based on input from the carriers, the SO proposal's two advantages and seventeen disadvantages or uncertainties. Despite the daunting list of immediately foreseeable problems,⁵ the CPUC nonetheless proceeded to seek Commission approval of the SOs.

As detailed herein, the CPUC Petition does nothing to address the imminent exhaust in the 310 numbering plan area ("NPA"),⁶ does nothing to preserve numbering

⁴ *Id.* at p. 3 ("Carriers recommend that the CPUC obtain input from the industry on technical feasibility, costs, and other challenges associated with the implementation of the SOs before filing the SO petition with the FCC.")

⁵ *Id.* at pp. 5-6.

⁶ The CPUC has delayed relief in both the 310 and 909 area codes despite overwhelming evidence that there simply are not sufficient numbering resources to support the telecommunications needs in those areas. However, on Nov. 13, 2003, the CPUC finally approved a split of the 909 area code. Order Implementing Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service, R.95-04-043; Order Instituting Investigation on the Commission's Own Motion into Competition for Local Exchange Service, I.95-04-044, Order Implementing 909 Area Code Relief Plan [D.03-11-] __ CPUC 2d __ (Nov. 13, 2003). Although potentially too late to avoid consumer disruption between now and February

resources and delay exhaust in other California area codes, will result in massive customer confusion and an unprecedented level of stranded numbers, and could pose impediments to nascent developing services, such as Voice over Internet Protocol (“VoIP”), allegedly one of the “non-geographic based” services that would be permanently assigned to the SO.⁷ Therefore, Nextel requests that the Commission deny the CPUC Petition on the ground that it needs further study by the CPUC and the entire telecommunications industry. In the interest of creating additional numbering resources in the meantime, the Commission should again remind the CPUC of its legal obligation to implement area code relief in those areas that are at or near imminent exhaust.

II. DISCUSSION

In previous Orders, the FCC has noted that when considering state commission requests for authority to implement SOs, such requests must address eight specific criteria,⁸ and, “as an initial matter, . . . discuss why the . . . benefits of the proposed SO would be superior to implementation of an all-services overlay.”⁹ Here, the CPUC fails to satisfy this initial Commission requirement and, in addressing these eight criteria, creates more questions than it answers.

2005, when numbers will become available in the new 951 area code, the CPUC has finally taken appropriate action and should be required to quickly follow suit to remedy the 310 exhaust situation.

⁷ It is unclear why the CPUC views VoIP as a “non-geographic based” service when the “location” of the VoIP number’s rate center is potentially of import to a party calling the VoIP number. For “ordinary” calls to VoIP phone numbers, the rate centers associated with the calling and called numbers, as is true with any traditional call over the public switched telephone network, dictate the rating of that call.

⁸ See, e.g., *In the Matter of Petition of the Connecticut Department of Public Utility Control for Delegated Authority To Implement Specialized Transitional Overlays*, CC Docket No. 99-200, ¶ 2 (released May 23, 2003); *Numbering Resource Optimization, Third Report and Order and Second Order on Reconsideration*, 17 FCC Rcd 255, ¶ 81 (“Third Report and Order”). The eight criteria are: (1) the technologies or services to be included in the SO; (2) the geographic area to be covered; (3) whether the SO will be transitional; (4) when the SO will be implemented, and, if a transitional SO is proposed, when the SO will become an all-services overlay; (5) whether the SO will include take-backs of telephone numbers from existing customers; (6) whether there will be ten-digit dialing in the SO and the underlying area code(s); (7) whether the SO and the underlying area code(s) will be subject to rationing; and (8) whether the SO will cover an area in which pooling takes place. *Id.*

A. The SOs Will Not Delay Exhaust Or Provide Relief In Those Area Codes That Are At Or Near Imminent Exhaust.

The CPUC Petition notes that on March 14, 2003, it withdrew a petition it had earlier filed at the FCC, which requested authority to implement technology-specific overlay area codes over the 310 and 909 NPAs. There, the CPUC stated it would submit a new petition to implement a different type of specialized overlay.¹⁰ This SO proposal, however, does nothing to stave off exhaust in the 310 and 909 NPAs despite the fact that Nextel and other wireless carriers have already or will very soon experience exhaust in certain rate centers in each of these NPAs.¹¹ Even if the SOs could prolong the life of 310 or the 909 NPA, which will not actually see additional numbering resources, at the earliest, until February 27, 2005, such relief would be far too late, given the time required to address and try to resolve the numerous issues posed by the SO proposal. Additionally, the CPUC fails to provide any data on the extent to which these SOs will extend the life of any area code -- not just 310 and 909 -- in California.¹² To ensure the availability and use of numbering resources for California consumers, in both urban and rural areas, the Commission should deny the CPUC Petition and require the CPUC to immediately implement traditional area code relief, such as an all-services overlay or a geographic split, for those area codes at imminent exhaust.¹³

⁹ See Third Report and Order, 17 FCC Rcd 255, ¶ 81.

¹⁰ CPUC Petition at footnote 1.

¹¹ See *Comments of the Joint Wireless Carriers On the Draft Decision of ALJ Pulsifer and the Alternate Draft Decision of Commissioner Lynch Regarding Area Code Relief in the 909 Numbering Plan Area* (filed October 20, 2003); see also *Comments of the Joint Wireless Carriers On The Draft Decision Of ALJ Pulsifer And The Alternate Draft Decision of Commissioner Lynch* (filed May 27, 2003) regarding area code relief in the 310 NPA.

¹² See generally CPUC Petition.

¹³ See Numbering Resource Optimization, *Second Report and Order*, CC Docket No. 99-200, CC-Docket No. 96-98 (released December 29, 2000) ("Second Report and Order") ¶ 59 ("Unavailability of numbers, or an inefficient allocation of available numbers, could prevent or discourage consumers from taking new services. Thus, the timely implementation of area code relief is essential if new providers are to enter and new services are to appear in the telecommunications marketplace.").

B. The Supposed Benefits Of SOs Are Now Highly Questionable Given The Implementation Of Pooling And The Pending Implementation Of Local Number Portability.

Nextel has previously supported a temporary, technology-specific overlay to bridge the period during which pooling had begun for wireline carriers but wireless carriers were technically unable to take numbers from thousands-block number pools.¹⁴ Nextel respectfully submits that the previously supposed advantages of an SO have greatly diminished with the implementation of thousands-block number pooling (“number pooling”) in November 2002, and the implementation of wireless local number portability (“LNP”) later this month. With number pooling and LNP in place, SOs, of whatever variety, are a tool whose time has passed and are not only unnecessary, but will cause confusion and impediments to developing technologies.

1. Given the Implementation of Number Pooling, the CPUC Petition Has Limited Utility and Results in Inefficient Allocation of Numbering Resources.

In November 2002, the wireless industry implemented number pooling, which allows carriers to receive numbers in blocks of 1,000 rather than 10,000. Yet, the proposed SO takes a step backwards by requiring some carriers to double the numbers they request in each rate center. For example, if a wireline carrier provides a “geographic” service within most of the 738 rate centers in California and also provides one of the services subject to the SO in those same areas, this carrier would have to request at least two one-thousand blocks in each rate center, one in the underlying NPA and one in the SO NPA, even though it may not need more than one one-thousand block

¹⁴ See Nextel Comments Supporting Proposal Upon Clarification and Restriction, *In the Matter of Petition of Connecticut Department of Public Utility Control for Delegated Authority to Conduct a Transitional Service Technology Specific Overlay Trial in Connecticut*, CC Docket No. 99-200, NSD File No. L-02-03 (filed February 06, 2002).

to provide both services. This result runs in direct contravention of the goals and purpose of thousands-block numbering pooling, by creating additional stranded numbers rather than decreasing them. The CPUC staff Memorandum specifically recognized this problem, albeit without actually depicting it in detail, by noting “. . . the potential for stranded numbers.”¹⁵ The CPUC Petition, however, completely ignores this flaw within its proposal. In its haste to petition the Commission, the CPUC has given no attention to resolving the considerable flaws and uncertainties nestled within its completely untested “super-sized SO” concept.

Moreover, the fact that paging companies are not pooling-capable means they will have to be assigned numbers in the SO in blocks of ten thousand. As a result, numbers in the new SO could quickly evaporate as paging companies would need to replace all of their numbers taken back across the numerous underlying area codes in which they operate today. Assuming a paging company needs resources in just one hundred of the rate centers in the new SO, that single paging company could immediately consume one million of the new numbers in the SO by taking 10,000 numbers in each of those 100 rate centers.

2. *The Proposed SOs are Inconsistent with LNP.*

Implementation of an SO is not justified today given the pending implementation of wireless LNP on November 24, 2003. Once LNP is in place it will be impossible to keep track of how numbers are used, as consumers will be free to port, for example, their VoIP phone number to a wireless service provider. This consideration is but one more reason why an *all-services* overlay is more appropriate in a post-LNP environment than a

¹⁵ See the Memorandum at p. 5.

specialized overlay. In an all-services overlay, there is no need to keep track of how numbers are used by end users.

C. The CPUC Has Failed To Adequately Address The Commission's Eight Criteria For Considering An SO.

Even if the Commission believes that SOs continue to represent a viable method of area code relief, despite implementation of number pooling and LNP, it should recognize that the CPUC Petition does not pass muster when examined under the Commission's eight criteria for considering an SO proposal.¹⁶

First, the CPUC has proposed a permanent SO that would include all "transparent" or "non-geographic based" numbers. According to the CPUC, these services would include VoIP and dial-up numbers for Internet service providers. The CPUC proposes such an SO despite the fact that VoIP service is a new, and still evolving, area that is not easily categorized for any purpose -- much less for telephone number assignment purposes.¹⁷ Additionally, even assuming the services could be neatly categorized, even the CPUC recognizes the enormous cost associated with the need to modify billing, provisioning and ordering databases to ensure that a carrier's services are accurately identified and assigned to the correct area code.¹⁸

Second, the CPUC proposes two SOs, each of which would cover one-half of the entire state of California. Nextel recognizes that, in theory, SOs covering more than one area code could reduce the demand for numbers in multiple, underlying area codes,¹⁹ but

¹⁶ See n. 8, *supra*.

¹⁷ See Letter from Chairman Powell of the Federal Communications Commission to Senator Ron Wyden (Nov. 5, 2003) (discussing the potential development, deployment and proliferation of VoIP services and how "... VoIP providers are introducing innovations previously unheard of in voice communications ..."); see also *FCC to Begin Internet Telephony Proceedings, Public Notice*, (rel. November 6, 2003) (announcing that the Commission will hold a forum on VoIP services on December 1, 2003).

¹⁸ CPUC Petition at p. 3.

¹⁹ See Third Report and Order, 17 FCC Rcd 255, ¶ 83.

the CPUC has taken this concept to its most illogical extreme, risking tens of thousands of stranded numbers and even number exhaust in the SO. Given the sheer number of “non-geographic” numbers currently in use across the 25 underlying area codes, replacing them with numbers in only two area codes poses the risk of quickly exhausting the resources of the two new overlay codes.

Additionally, given the sheer geographic expanse of the two SOs, consumers could experience increased costs due to the indeterminate rating of calls placed between the underlying area codes and the SO NPA. The “non-geographic based” services identified in the SO, such as paging or VoIP services, would lose their geographic identity and callers would not be able to readily ascertain whether or not calling these numbers would result in toll charges. The CPUC staff recognized these and other flaws in the proposed SOs; yet the CPUC’s Petition fails to explain how it would even address these problems, much less resolve them in a reasonable manner.

Third, the CPUC’s proposal is additionally alarming because it would involve number take-backs from existing customers and permanent seven-digit dialing. As the Commission has previously recognized, certain aspects of number relief are highly disruptive and/or potentially confusing to consumers.²⁰ Here, the take-back proposal -- taking back numbers from 10 to 15 area codes and replacing them with numbers from a single area code -- will be particularly disruptive. Because each individual seven-digit NXX-XXXX string can exist only once in a single NPA and because the single SO NPA is replacing up to 15 separate NPAs, many consumers will not only have to reprogram their equipment and change business cards, stationary and other publications containing their phone/fax numbers, but they also will be faced with an entirely new 10-digit phone

number. The CPUC proposal, therefore, overturns the principal advantage of all-services area code overlays, *i.e.*, that no existing number need be taken back.

The Commission has not favored SOs that include take-backs because it recognizes that such take-backs result in significant cost and inconvenience to customers.²¹ To ensure that the costs and benefits of take-backs are given careful consideration, the Commission requires state commissions to: (i) show that the affected consumers support the relinquishing of their phone numbers; (ii) provide incentives for carriers and customers to relinquish their numbers; and (iii) provide a phased-in approach to ease the burden on customers and carriers.²² The CPUC, however, does not address any of these requirements, but only states that it would plan “. . . to work closely with the industry to determine if and how take-backs should be implemented in California.”²³

Furthermore, the CPUC asks for a permanent waiver of the mandatory ten-digit dialing rule. Nextel opposes the proposed permanent seven-digit dialing scheme because it not only furthers the discrimination imposed on consumers in the new overlay code, but it also can result in the call routing problems that have been experienced in other overlay situations.²⁴ For example, since there likely will be an active NXX in each of the underlying pre-existing area codes that is identical to the overlay NPA (*e.g.*, assume the SO NPA is 687 and an underlying NXX is 687), the landline network -- if not programmed correctly -- may not be able to distinguish between seven and ten-digit calls, and will, therefore, not recognizing 687 as the NPA, route the call based on the first

²⁰ *Id.* at ¶¶ 88-92.

²¹ *Id.* at ¶¶ 88-90.

²² *Id.* at ¶ 90.

²³ CPUC Petition at p. 6.

²⁴ See Comments of Nextel Communications, Inc., *In the Matter of Petition of the California PUC for Authority to Implement Technology-Specific Overlay Area Codes and Request for Expedited Treatment*, CC Docket No. 99-200, CC Docket No. 96-98, pp. 7-9 (filed November 25, 2002).

seven dialed digits rather than waiting for the full ten digits. These routing issues are further exacerbated by the fact that the new SO covers up to 15 different NPAs. As a result, calls are misrouted, and consumers are aggravated and confused.

Measured against the eight criteria for considering an SO proposal, the CPUC Petition has failed to adequately address the numerous problems associated with its proposal. Moreover, the CPUC's supposed rationale for its overlay proposal, *i.e.*, *area code relief*, has not been demonstrated and thus is not sufficient to overcome the SOs' myriad complexities.

III. CONCLUSION

For the reasons discussed herein, Nextel respectfully requests that the Commission deny the CPUC Petition.

Respectfully submitted,

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ATTACHMENT A
CALIFORNIA PUBLIC UTILITIES COMMISSION STAFF MEMORANDUM